

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAR 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Inquiry Concerning Deployment of)
Advanced Telecommunications)
Capability to All Americans in a)
Reasonable and Timely Fashion, and)
Possible Steps to Accelerate Such)
Deployment Pursuant to Section 706)
of the Telecommunications Act of 1996)

CC Docket No. 98-146

**COMMENTS OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"), by its attorneys, respectfully submits the following comments in response to the Commission's *Notice of Inquiry* released on February 18, 2000 in the above captioned matter.¹

I. INTRODUCTION

The Commonwealth shares the Commission's concern that rural and underserved areas such as the Commonwealth will continue to lack access to advanced telecommunications capability² and may be left out of the broadband revolution currently sweeping across the

¹ *In re* Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Notice of Inquiry*, CC Dkt. No. 98-146, FCC 00-57 (Feb. 18, 2000).

² According to the Commission, "advanced telecommunications capability" refers "to facilities that can send and received enormous amounts of information very quickly. For example, a user can change web pages as fast as he or she can flip through the pages of a book, and can have services such as two-way videoconferencing." Federal Communications Commission Issues Inquiry for Its Second Report on Advanced Telecommunications Capability, *Public Notice*, CC Dkt. No. 98-146 at 1 (Feb. 17, 2000).

No. of Copies rec'd 074
List A B C D E

telecommunications industry.

The unique importance of advanced telecommunications capability in the Commonwealth cannot be overestimated. Due to its insular nature and distant location from the mainland United States,³ advanced telecommunications capability offers an important means by which Commonwealth citizens can access the wider world. Package delivery to and from points outside the Commonwealth is cumbersome, slow and expensive, as is travel by ship. Travel by air to and from the Commonwealth – especially between the Commonwealth and the mainland United States – is often prohibitively expensive. Were affordable advanced telecommunications capability to become a reality in the Commonwealth, it would allow U.S. citizens⁴ to realize substantial economic and informational efficiencies previously unattainable by traditional telecommunications media, providing far greater access to resources located on the mainland United States as well as throughout the rest of the world.

Under Section 701 of the “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America,”⁵ which governs the relationship between the Commonwealth and the United States:

³ The Commonwealth consists of 14 islands strategically located in the North Pacific Ocean approximately 3,300 miles west of Honolulu, 1,272 miles southeast of Tokyo and 50 miles north of the Territory of Guam. *See* U.S. Department of the Interior, Office of Insular Affairs website www.doi.gov/oia/facts.html (visited March 8, 2000) (“OIA website”).

⁴ All persons born in the Commonwealth are citizens of the United States. *See* Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, 48 U.S.C. § 1801 note (Supp. 1999), approved by Congress in Public Law 94-241 (March 24, 1976), 90 Stat. 263 (“Covenant”); Presidential Proclamation No. 5564 (implemented on November 3, 1986); OIA website.

⁵ *See* Covenant.

The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government.⁶

This special responsibility to promote a progressively higher standard of living for U.S. citizens in the Commonwealth can be furthered by the Commission's ensuring that affordable advanced telecommunications capability is realized in the Commonwealth.

With the objective of promoting economic development, the Commonwealth has sought closer integration into the U.S. telecommunications infrastructure.⁷ Unfortunately, the Commonwealth still lags far behind the rest of the United States in the provision of advanced telecommunications capability. To date no digital subscriber line ("DSL") services of any kind have been provided either to business or residential consumers in the Commonwealth.⁸

⁶ See *id.* n.2, at § 701.

⁷ The Commonwealth became a part of the North American Numbering Plan on July 1, 1997 and was assigned the "670" domestic area code. See *In re* Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd. 8776, 8996 at n. 1058 (1997)(citing to North American Numbering Plan Planning Letter, NANP-Introduction of New 670 (CNMI) Numbering Plan Area (NPA), PL-NANP-010 (Sept. 5, 1996)). Since September 1, 1997, the Commonwealth has also been encompassed under the Commission's rate integration policy. *In re* Policy and Rules concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564 (1996), *recon. Denied Memorandum Opinion and Order*, 12 FCC Rcd. 11548 (1997), *modified by First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 11812 (1997), *partially stayed by Order*, 12 FCC Rcd. 15739 (appeal pending).

⁸ The Commonwealth is unaware of any plans by Micronesian Telecommunications Corporation ("MTC"), the incumbent, monopoly provider of local telecommunications services in the Commonwealth, to offer DSL services.

II. ADVANCED TELECOMMUNICATIONS CAPABILITY IS NOT BEING DEPLOYED IN THE COMMONWEALTH

Advanced telecommunications capability is not presently being deployed to U.S. citizens in the Commonwealth. Unlike the growing number of consumers in the mainland United States, those in the Commonwealth (including both business and residential consumers) have no access to DSL services and most likely will not have such access without intervention by the Commission. As shown below, the lack of access in the Commonwealth to advanced telecommunications services and capability is clearly inconsistent with the principles of Sections 254(b)(2),⁹ 254(b)(3)¹⁰ and 706(a)¹¹ of the Communications Act of 1934, as amended ("Act"), which collectively mandate that such services and capability be provided to *all* Americans, including those in insular areas, in a reasonable and timely fashion.

Specifically, Section 706(a) of the Act requires that the Commission:

. . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to *all Americans* . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure development.¹²

Section 254(b)(2) broadly provides that all regions of the United States should have access to advanced telecommunications services. The Commonwealth, as a U.S. commonwealth, is

⁹ 47 U.S.C. § 254(b)(2) (1999).

¹⁰ *See id.* § 254(b)(3).

¹¹ *See id.* § 706(a).

¹² *See id.* (emphasis added).

clearly encompassed as a "region" of the United States.¹³ Also, Section 254(b)(3) specifically applies to rural and insular areas such as the Commonwealth and provides:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and informational services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.¹⁴

As stated previously, the Commonwealth's incumbent monopoly local exchange carrier, MTC, does not offer any DSL services at the present time and the Commonwealth is unaware of any plans by MTC to do so in the near future. Clearly, U.S. consumers in the Commonwealth are not being provided with advanced telecommunications services that are reasonably comparable with those enjoyed by consumers in urban areas of the mainland United States.

The Commonwealth has historically suffered from unreasonable, discriminatory treatment in telecommunications and has, all too often, been ignored and left to lag behind the mainland

¹³ Section 3(40) of the Act defines a "state" to include "the District of Columbia and the territories and possessions." 47 U.S.C. § 3(40) (1999). The Commission has repeatedly stated that the Commonwealth, as a U.S. territory, fits within the rubric of "state" by the plain language of the definition. *See e.g.*, Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *Memorandum Opinion and Order*, 12 FCC Rcd. 11548, 11550 (July 30, 1997); Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 11812, 11813, 11818 (July 30, 1997); *In re Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, CC Dkt. No. 96-149 and CC Dkt. No. 96-61, FCC 97-142, at ¶ 174 (April 18, 1997); Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254 (g) of the Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564, 9589 and n. 118 (Aug. 7, 1996).

¹⁴ 47 U.S.C. § 254(b)(3) (1999).

U.S. in terms of technological innovation. A perfect example of this discriminatory lag is rate integration. While traditionally underserved areas such as Alaska and Hawaii and insular areas such as Puerto Rico and the U.S. Virgin Islands began to benefit from rate integration decades ago, the Commonwealth has only been encompassed under the Commission's rate integration policy since September 1, 1997.¹⁵

Thus, the danger of technological isolation is very real, and the Commonwealth wishes to avoid a similar discriminatory lag in the provisioning of advanced telecommunications capability. As one observer recently stated, "[I]f ever there's been a 'clear and present danger' to the future of American society, it's the 'digital divide' that threatens to aggravate long-standing patterns of discrimination and injustice."¹⁶ The Commonwealth urges the Commission to ensure that it does not once again become a victim of the "digital divide."

III. THE COMMISSION SHOULD INITIATE A FIELD HEARING FOR INSULAR AREAS AS IT HAS FOR OTHER AREAS IN ITS FEDERAL-STATE JOINT CONFERENCE ON ADVANCED SERVICES

The Commission has announced a schedule of six field hearings to be organized by the Federal-State Joint Conference on Advanced Services.¹⁷ The Commission has organized field

¹⁵ *In re* Policy and Rules concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, *Report and Order*, 11 FCC Rcd. 9564 (1996), *recon. Denied Memorandum Opinion and Order*, 12 FCC Rcd. 11548 (1997), *modified by First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 11812 (1997), *partially stayed by Order*, 12 FCC Rcd. 15739 (appeal pending).

¹⁶ *AOL/Time Warner Merger: Hearing Before the Senate Comm. on the Judiciary*, 106th Cong. (2000) (testimony of Gerald M. Levin, Chairman and CEO of Time Warner Inc.).

¹⁷ Joint Announcement of Federal and State Members of the Federal-State Joint Conference on Advanced Services, *Public Notice*, DA 00-240 (Feb. 11, 2000).

hearings focusing on broadband deployment in inner cities, rural and remote areas such as Alaska and Native American lands, and urban multi-cultural settings.¹⁸ Unfortunately, the unique problems and issues facing low-income, insular island areas such as the Commonwealth¹⁹ have been largely overlooked in the field hearing process. The Commonwealth proposes, as a seventh field hearing, an "Insular Field Hearing" that would encompass all of the insular U.S. areas, including the Commonwealth, and which would specifically address the unique issues facing low-income, insular island areas in the deployment of advanced telecommunications services.

In addition, the Commonwealth notes that the Commission has established a training initiative for Native American tribal leaders to inform them "about various facets of telecommunications services and how different technologies, regulatory rules, and government programs can be used to benefit tribal communities."²⁰ The Commonwealth also suggests that the Commission establish a similar initiative for leaders of insular areas and include insular areas in future initiatives and field hearings.

¹⁸ *See id.*

¹⁹ *See* Comments of the Commonwealth and Exhibit in CC Dkt. No. 96-45 (Dec. 17, 1999); Reply Comments of the Commonwealth in CC Dkt. No. 96-45 (Jan. 19, 2000).

²⁰ Federal Communications Commission Announces Indian Telecom Training Initiative (ITTI) 2000 Fall Seminar, *Public Notice* (Feb. 29, 2000).

IV. CONCLUSION

As demonstrated above, the Commonwealth urges the Commission to ensure that advanced telecommunications capability is deployed to the Commonwealth in a reasonable and timely fashion, and guarantee that advanced telecommunications services reasonably comparable to those deployed in urban areas are deployed (at reasonably comparable rates) in the Commonwealth.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', written over a horizontal line.

Thomas K. Crowe
C. Jeffrey Tibbels,
LAW OFFICES OF THOMAS K. CROWE, P.C.
2300 M Street, N.W., Suite 800
Washington, D.C. 20037
(202) 973-2890

COUNSEL FOR THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS

Dated: March 20, 2000